IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2410 of 2007

Chaganlal Damji Kacha — Applicant
Vs.
Tanaji Ramkisan Damare & anr. — Respondents

Mr.U.P.Warunjikar for applicant.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 24, 2007.

P.C.

. Heard Mr.Warunjikar, the learned counsel for the applicant who is seeking special leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Judicial Magistrate, First Class at Pune on 18/6/2007 in SCC No.2971/2007 under Section 138 of the Negotiable Instruments Act, 1881. The applicant - complainant had claimed that the cheque bearing No. 884359 dated 15/12/2006 in the sum of Rs.2,50,000/- was drawn in his favour of the Cosmos Co-op. Bank Ltd. and the said cheque when submitted for encashment was dishonoured (Exh. 17 is the cheque and Exhibit 18 is the Bank memo). He, therefore, issued, legal notice at Exhibit 19 and the same was received as per Exhibit 21. As there was no response within 15 days for repayment of Rs.2,50,000/-, he filed the compliant. The defence

of the accused was that he did not owe any amount by way of loan or debt amounting to Rs.2,50,000/- and the dishonoured cheque was kept with the complainant as a security on account of two agreements signed with him at Exhibits 24 and 25 for taking on hire the iron plates. He stated that in the month of September 2006 he could not pay the rental charges of these plates to the complainant and though he returned the plates and requested for some time to pay the rental charges of Rs.20,000/-, the complainant proceeded to writ the blank cheque in his name and deposited for encashment.

. The trial Court considered the evidence of both the complainant as well as the accused as both of them had stepped in the witness box and noted that the complainant could not prove that the cheque was drawn by the accused for discharge of debt or any other legal liability and it further held that the accused had rebutted the presumption by cross-examining the complainant as well as by his personal depositions.

. The complainant initially stated that he was carrying on business in the name of "C.D. Kacha" for

the last 15 to 16 years and he denied that he was carrying out any business in the name of M/s. Narmada Construction. While in the witness box he was confronted with the two documents which were agreements signed between the complainant and the accused. The first agreement was with M/s.C.D.Kacha and the second agreement was with M/s. Narmada Constructions (Exhibits 24 and 25). He admitted in his cross-examination that by the first agreement he had let 601 plates to the accused signed on 9/6/2006. He also admitted that as per the second agreement at Exhibit 25 he had rented 250 plates to the accused. He also admitted that he was having in all 2400 plates which he used to give on rent and the price of each plate was Rs.600/-. He further admitted that he used to charge Rs.25/- per plate by way of rental charges per month. He also stated that he was a tax payee but in his Income Tax Returns the entry of Rs.2,50,000/- given by way of loan to the accused in November 2006 did not appear and he claimed that the entire amount was paid in cash for which there was no proof and no witness. On the other hand, the accused stated that the cheque was kept by way of security and when he could not pay rental charges of plates in September 2006, the complainant without informing the

accused proceeded to deposit the cheque which was dishonoured. The complainant in his cross-examination admitted that the name of the payee on the cheque was written in his own handwriting and it was a blank cheque which he filled in and deposited.

. Under these circumstances, the reasoning set out by the trial Court in support of the order of acquittal does not require any reconsideration at the hands of this Court and, therefore, leave to appeal is refused. Application is rejected.

(B.H.MARL